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7 IN THE UNITED STATES DISTRICT COURT  
8 NORTHERN DISTRICT OF CALIFORNIA  
9 OAKLAND DIVISION

10  
11 IN RE CATHODE RAY TUBE (CRT) ANTITRUST  
12 LITIGATION

Master Case No 4:07-cv-5944-JST

13  
14 This Relates to:  
15

MDL No 1917

16 ALL DIRECT PURCHASER ACTIONS

17  
18 ORDER APPROVING AS MODIFIED  
19 SPECIAL MASTER'S SECOND INTERIM  
20 REPORT & RECOMMENDATION ON  
21 PLAINTIFFS' MOTION FOR DISCOVERY  
22 SANCTIONS

23  
24 ALL INDIRECT PURCHASER ACTIONS

25  
26 This report and recommendation addresses implementation of the August 21,  
27 2023, Order Approving Special Master's Interim Report & Recommendation on Plaintiffs'  
28 Motion for Discovery Sanctions ("Interim Order"). ECF 6264 (approving ECF 6233 dated August  
4, 2023). The court ordered: "Irico to identify and produce to its counsel, Baker Botts, for  
forensic analysis and recovery, all of Su's electronic devices he used during his employment at  
Irico, including computer(s), laptops, hard drives, phones, for information and documents  
responsive to the Su Order and this order, with receipt of those electronic devices by Baker  
Botts no later than September 1, 2023." ECF 6264 at 9. That order further stated: "Irico and its

1 counsel are hereby warned that full compliance with this order and the Su Order is expected.  
2 In light of the pending motion for discovery sanctions, Irico's continuing failure to comply with  
3 discovery orders risks terminating sanctions as well as less severe sanctions." ECF 6264 at 7.

4 On August 29, 2023, Irico's counsel, Geraldine Young of Norton Rose Fulbright,  
5 wrote to inform the undersigned that Irico had not produced Mr Su's laptop to Irico's lead  
6 United States counsel, Baker Botts, but rather had produced it to "Irico's outside counsel in  
7 China" and "a forensics technology vendor in China" who were working with Irico's United  
8 States and Chinese outside counsel and that "Irico's Chinese outside counsel will conduct the  
9 required searches thereafter for any documents responsive under the Order, and the vendor  
10 will process and transfer any responsive documents to Irico's U.S. counsel." August 29, 2023  
11 Geraldine Young Letter, at 1-2. Ms Young further reported that: (1) Irico's vendor has  
12 completed its forensic imaging and recovery of the laptop's contents and returned the device to  
13 Irico, and (2) before shipping Su's laptop outside of China to Baker Botts, Irico's vendor would  
14 need to conduct a "complete state secrets review," which "the vendor currently estimates . . .  
15 may take up to 2 months' time." *Id.* at 2. Ms Young wrote: "Irico, therefore, respectfully asks  
16 Your Honor to confirm whether Irico's proposed plan, outlined above, meets the requirements  
17 of the Order." *Id.*

18 The short answer is no. On August 4, 2023, Irico was ordered to produce Su's  
19 laptop to the possession and control of Irico's lead United States counsel, Baker Botts, for  
20 forensic analysis and recovery, by September 1, 2023. ECF 6233. Irico did not object and the  
21 court approved the order on August 21, 2023. ECF 6264. Now Irico seeks to negotiate its way  
22 out of the Interim Order, or at best to seek clarification. The Interim Order stands. If Irico  
23 chooses not to comply with the order, it risks adding bases for severe discovery sanctions.

24 The Interim Order required delivery of Su's laptop to Baker Botts for the  
25 following reasons. John Taladay of Baker Botts is Irico's lead counsel in this matter and has  
26 been involved in this litigation since April 10, 2008. ECF 247 (Order admitting Taladay *pro hac*  
27 *vice* as counsel of record for Philips). Among counsel representing the Irico defendants, Mr  
28

1 Taladay has the longest tenure and unrivalled knowledge of the history of this litigation. The  
2 other reason is the inadequacy of discovery that Irico has to date produced.

3 At the July 19, 2023, hearing on plaintiffs' motion for discovery sanctions, the  
4 undersigned questioned Irico's United States counsel at length about whether all Irico  
5 documents responsive to the Su Order had been produced or placed on a privilege log. Irico's  
6 United States counsel repeatedly answered that he "believe[d]" and it was his "understanding"  
7 that all responsive documents had been produced or disclosed in a privilege log based on asking  
8 the Irico in-house contact to search for all categories of information set forth in the Su Order.

9 Following is an excerpt:

10 Judge Walker: Has Irico produced or listed on its privilege log all documents that  
11 relate to any consulting agreements, pension benefits, stock options that Mr. Su  
12 has received from Irico following his resignation?

13 Irico's United States counsel: Your Honor, it's our understanding there are none  
14 of those. So I believe we've disclosed that.

15 Judge Walker: The answer to that is yes or you don't know.

16 Irico's United States counsel: I don't believe there was anything to disclose. So I  
17 think the answer is yes.

18 Judge Walker: Well, let me ask this. You've answered yes to each of these  
19 questions. Is that affirmative answer predicated on the fact that there are no  
documents of the kind that I've described?

20 Irico's United States counsel: It's -- if there are additional documents besides  
21 what we produced, they'll be put on our privilege log.

22 Judge Walker: In other words, you produced all documents that relate to the  
23 subjects that are in the possession, custody or control of Irico. Is that correct?

24 Irico's United States counsel: That is our understanding. Yes, Your Honor.

25 Judge Walker: What do you mean that's your understanding?

26 Irico's United States counsel: I believe we have asked for and been provided  
27 everything that you have listed in those categories repeatedly and gone back to

1 double check whether or not we've received them and we have produced all of  
2 the materials that we received or put them on our privilege log.

3 Judge Walker: Has Irico produced or listed on its privilege log all documents that  
4 relate to Irico's efforts to secure Mr. Su's deposition testimony in this case?

5 Irico's United States counsel: Yes, Your Honor. I believe that's the case.

6 From this interchange, it became clear that Irico's United States counsel had relied exclusively  
7 on asking Irico's in-house representative (not a qualified attorney in the United States) to  
8 search for and produce responsive documents. This sheds light on the dearth of documents  
9 produced in response to the Su Order. Similarly, Ms Young's proposal would place  
10 responsibility for discovery in this matter in the hands of unqualified, unnamed individuals with  
11 no known understanding of United States discovery and legal standards. Given the history of  
12 discovery lapses in this case, Ms Young's proposal is not acceptable and would be a violation of  
13 the Interim Order.

14 The Interim Order did not specify *where* Baker Botts should take possession of  
15 Su's laptop. Given the estimated two-month delay for state secrets review required before  
16 shipping a laptop out of China, that concern may be circumvented by producing the laptop to  
17 Irico's lead United States counsel, Baker Botts, *in China*. Irico may comply with the Interim  
18 Order by having a Baker Botts attorney of record in this case travel to China with at least a  
19 United States vendor experienced in discovery of Electronically Stored Information (ESI), an  
20 experienced translator and a United States discovery team, to take physical possession of the  
21 Su laptop and its complete hard drive contents, consistent with the deadlines set forth in the  
22 Interim Order.

23 To implement the Interim Order, Mr Taladay, as Irico's lead United States  
24 counsel in this matter, shall be expected to take primary responsibility for directing and  
25 supervising searches for and production of documents and information responsive to the  
26 Interim Order and the Su Order and to submit his declaration describing his personal  
27 knowledge of and supervision of steps taken under his direction and control to comply with the  
28

1 orders. Baker Botts attorneys shall be responsible for: (1) supervising a United States forensic  
2 vendor to conduct a forensic analysis to determine whether and when any files have been  
3 deleted, wiped or transferred from Su's laptop or hard drive, generating a report and  
4 recovering such information; (2) conducting a thorough review of all contents of the laptop and  
5 its imaged hard drive; (3) searching for and collecting all information responsive to all search  
6 terms that the Plaintiffs designate; (4) producing responsive information and (5) reporting to  
7 and receiving direction from Mr Taladay. Baker Botts shall also be responsible for ascertaining  
8 whether any other devices exist that may contain Su's emails, texts and other information  
9 responsive to the Su Order and Interim Order, searching, collecting and producing any  
10 responsive information contained therein. Baker Botts should contact Mr Su to obtain his  
11 assistance with collecting responsive information and conduct interviews of Irico employees in  
12 positions with knowledge of Mr Su's resignation, determination of his end date of employment  
13 and other issues set forth in the Su Order and the Interim Order in their search for responsive  
14 documents and information.

15                 No later than **September 7, 2023**, Plaintiffs' may, at their discretion, provide  
16 search terms designed to identify responsive documents and information to Baker Botts for  
17 searching the Su laptop and Irico's servers, backup drives and relevant devices.

18                 As further implementation of the Interim and Su Orders, Irico's United States  
19 counsel are directed to conduct searches for ESI (electronically stored information) using  
20 Plaintiffs' designated search terms (for information responsive to the Su Order and the Interim  
21 Order) on Irico's servers, backup drives and devices, and to collect and produce responsive  
22 documents and information, including metadata, consistent with the deadlines set forth in the  
23 Interim Order. If Irico's United States counsel deems any search terms improper, they can bring  
24 that matter to the undersigned's attention and withhold production of selected documents  
25 until the objection is resolved. But collection of responsive documents precedes objections.

1 Irico's United States counsel are accomplished litigators who are experienced in  
2 conducting discovery on behalf of clients. The undersigned expects that they will implement  
3 the Interim and Su Orders consistently with United States discovery standards.

4 Irico's continuing failure to conduct adequate searches for responsive  
5 documents months ago has led to a succession of discovery orders. Irico is again warned that  
6 the consequence of repeatedly violating court orders includes terminating sanctions and lesser  
7 but still severe sanctions.

8 To the extent any of the foregoing, in the court's view, requires the close of  
9 discovery be lifted, the undersigned so RECOMMENDS.

10 Date: September 1, 2023



11  
12 Vaughn R Walker  
13 United States District Judge (Ret)

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15 The Recommended Order of the Special Master is Accepted and ~~Ordered / Denied /~~ Modified,  
16 so that the deadline for compliance is October 13, 2023.

17 Date: October 3, 2023



18  
19 Honorable Jon S Tigar  
20 United States District Judge